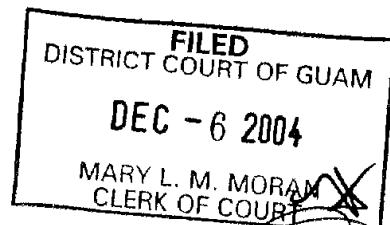




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11 **Attorneys for Respondents**

12
13
14 **IN THE DISTRICT COURT OF GUAM**
15 **HAGÅTÑA, GUAM**

16 JULIE BABAUTA SANTOS, individually) Civil Case No. 04-00006
17 and on behalf of all those similarly situated,)
18 Petitioner,)
19 vs.)
20 FELIX P. CAMACHO, Governor of Guam;)
21 ART ILAGAN, Director of Department of)
22 Revenue and Taxation; LOURDES M.)
23 PEREZ, Director of Department of)
24 Administration; DOUGLAS B. MOYLAN,)
25 Attorney General of Guam; and)
GOVERNMENT OF GUAM,)
Respondents.)

12 **COMES NOW** the Respondents and Douglas B. Moylan, Attorney General of Guam, and
13 move the Court under Rule 11(a) & (b) of the Federal Rules of Civil Procedure ("FRCP") and Rule
14 19.1 of the General Rules of the District Court of Guam ("GR") to strike the ENTRY OF
15

1 APPEARANCE of Rawlen MT Mantanona, Esq. and the Mantanona Law Office filed allegedly on
2 behalf of Respondents Lourdes M. Perez and Artemio R. Ilagan on November 24, 2004, and to
3 strike all other documents subsequently filed herein by the said Rawlen MT Mantanona, Esq. and
4 the Mantanona Law Office, including but not limited to the following documents:

5

6 (i) DEFENDANTS PEREZ AND ILAGAN'S REQUEST FOR HEARING
7 AND OBJECTIONS TO (1) PETITIONER'S MOTION FOR ORDERS
8 APPROVING THE ADMINISTRATION PLAN AND AMENDED
9 NOTICE; AND (2) THE ATTORNEY GENERAL OF GUAM'S MPA IN
RESPONSE TO MOTION FOR ORDERS APPROVING
ADMINISTRATION PLAN, filed November 24, 2004;

10 (ii) DECLARATION OF ARTEMIO B. ILAGAN IN SUPPORT OF: (1)
11 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
12 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
13 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
PETITIONER'S MOTION FOR APPROVAL OF THE
ADMINISTRATION PLAN, filed November 24, 2004;

14 (iii) DECLARATION OF LOURDES M. PEREZ IN SUPPORT OF: (1)
15 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
16 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
17 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
PETITIONER'S MOTION FOR APPROVAL OF THE
ADMINISTRATION PLAN, filed November 24, 2004;

18 (iv) DECLARATION OF JOSEPH C. MANIBUSAN IN SUPPORT OF: (1)
19 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
20 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
PETITIONER'S MOTION FOR APPROVAL OF THE
ADMINISTRATION PLAN, filed November 24, 2004.

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22 ///

23 ///

This motion is based upon the files and records herein, upon the declaration of Robert M. Weinberg, and the following Memorandum of Points and Authorities.

DATED THIS 6 **DAY OF** December **2004.**

OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General

ROBERT M. WEINBERG
Assistant Attorney General
Attorney for Respondents and
Attorney General Douglas B. Moylan

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

• **Appearance of Attorney General Douglas B. Moylan.**

This case was commenced on February 12, 2004 by a CLASS ACTION PETITION FOR RECOVERY OF INCOME TAX REFUNDS OR IN THE ALTERNATIVE FOR A WRIT IN THE NATURE OF MANDAMUS filed in this Court. Thereafter, on March 11, 2004, the Attorney General of Guam, Douglas B. Moylan, appeared as attorney of record for the Respondents by filing an OPPOSITION TO CLASS ACTION PETITION FOR RECOVERY OF INCOME TAX REFUNDS OR IN THE ALTERNATIVE FOR WRIT IN THE NATURE OF MANDAMUS. From that time until November 9, 2004, in accordance with FRCP 11(a) & (b) and GR 19.1, all pleadings filed with the Court on behalf of the Respondents were signed by an attorney in the Office of the Attorney General as attorney of record, and by no attorneys outside of the Office of the Attorney General.

- Attempted Appearance by Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark, LLP, and Shannon Taitano, Esq. of the Office of the Governor of Guam.

On November 9, 2004, Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark, LLP, and Shannon Taitano, Esq. of the Office of the Governor of Guam, ostensibly on behalf of Felix P. Camacho, Governor of Guam, filed an ENTRY OF APPEARANCE and other documents in this case.

- Court's Order issued on November 12, 2004.

On November 12, 2004, as a result of the filing of the above documents by Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark, LLP, and by Shannon Taitano, Esq. of the Office of the Governor of Guam, the Court entered the following Order in this case:

On November 9, 2004, this case came before the Court on a Request for Hearing on Objection to (1) Petitioner's Motion for Orders Approving the Administration Plan and Amended Notice; and (2) the Attorney General of Guam's MPA in Response to Motion for Orders Approving Administration Plan, filed by Defendant, Felix P. Camacho, Governor of Guam. Although there may be questions as to the timing of such a request, the Court believes the Defendant should be heard. Accordingly, the Defendant is given until Wednesday, November 24, 2004 to file his Objections. Responses to said Objections will be filed by Wednesday, December 8, 2004. A hearing on the matter is scheduled for Friday, December 17, 2004 at 10:00 a.m.

SO ORDERED this 12th day of November, 2004.

Thereafter, based on the above Order, Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark, LLP, and Shannon Taitano, Esq. of the Office of the Governor of Guam, filed other documents in this case on November 24, 2004.

1 • **Attempted Appearance by Rawlen MT Mantanona, Esq. and the Mantanona**
2 **Law Office.**

3 On November 24, 2004, the following documents were filed in this case by Rawlen MT
4 Mantanona, Esq. and the Mantanona Law Office:

5 (1) ENTRY OF APPEARANCE;

6 (2) DEFENDANTS PEREZ AND ILAGAN'S REQUEST FOR HEARING
7 AND OBJECTIONS TO (1) PETITIONER'S MOTION FOR ORDERS
8 APPROVING THE ADMINISTRATION PLAN AND AMENDED
9 NOTICE; AND (2) THE ATTORNEY GENERAL OF GUAM'S MPA IN
10 RESPONSE TO MOTION FOR ORDERS APPROVING
11 ADMINISTRATION PLAN;

12 (3) DECLARATION OF ARTEMIO B. ILAGAN IN SUPPORT OF: (1)
13 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
14 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
15 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
16 PETITIONER'S MOTION FOR APPROVAL OF THE
17 ADMINISTRATION PLAN;

18 (4) DECLARATION OF LOURDES M. PEREZ IN SUPPORT OF: (1)
19 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
20 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
21 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
22 PETITIONER'S MOTION FOR APPROVAL OF THE
23 ADMINISTRATION PLAN.

24 (5) DECLARATION OF JOSEPH C. MANIBUSAN IN SUPPORT OF: (1)
25 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
 TO ATTORNEY GENERAL'S BRIEF; AND (2) MEMORANDUM OF
 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
 PETITIONER'S MOTION FOR APPROVAL OF THE
 ADMINISTRATION PLAN.

26 The ENTRY OF APPEARANCE, item no. 1 above, is signed by "Rawlen MT
27 Mantanona, a duly licensed employee", and states that "Rawlen MT Mantanona, Esq. hereby
28 enters his appearance through the undersigned counsel on behalf of Defendants Lourdes M.
29

Perez and Artemio R. Ilagan, in the above entitled action and requests that the firm be served with all papers and notices filed in this matter".

• **No Withdrawal of Attorney or Substitution of Attorneys Filed.**

None of the documents filed in this case by Rawlen MT Mantanona, Esq. and the Mantanona Law Office have requested Attorney General Douglas B. Moylan to withdraw as attorney of record for Lourdes M. Perez or Artemio R. Ilagan, or stated that they desire Rawlen MT Mantanona, Esq. and the Mantanona Law Office to represent them in the case in lieu of Attorney General Douglas B. Moylan. No Notice of Withdrawal of Attorney General Douglas B. Moylan or Substitution of Attorneys, substituting Rawlen MT Mantanona, Esq. and the Mantanona Law Office for Attorney General Douglas B. Moylan, have been filed in this case. Moreover, no motion seeking Attorney General Douglas B. Moylan's withdrawal as attorney of record for Lourdes M. Perez or Artemio R. Ilagan has been filed herein.

Lourdes M. Perez is the Director of the Department of Administration and Artemio R. Ilagan is the Director of the Department of Revenue and Taxation. They were both appointed by Felix P. Camacho, Governor of Guam, and serve in the cabinet of Felix P. Camacho, Governor of Guam. The Order issued by the Court on November 12, 2004, does not apply to them.

LEGAL DISCUSSION

- **Attorney General Douglas B. Moylan Remains Attorney of Record of Directors Perez and Ilagan.**

For the reasons discussed below, Attorney General Douglas B. Moylan remains the attorney of record of Director of Administration Lourdes M. Perez and Director of Revenue and Taxation Artemio R. Ilagan, to the exclusion of Rawlen MT Mantanona, Esq. and the Mantanona Law Office.

1 • **The Entry of Appearance of Rawlen MT Mantanona, Esq. and the**
2 **Mantanona Law Office violates 28 U.S.C. §1654 and GR 19.1.**

3 Section 1654 of Title 28, U.S.C., states that "In all courts of the United States the parties
4 may plead and conduct their own cases personally or by counsel as, by the rules of such courts,
5 respectively, are permitted to manage and conduct causes therein". The applicable local rule of
6 the District Court of Guam governing appearances, withdrawals and substitution of attorneys is
7 GR 19.1.

8 Subsection (a) of GR 19.1 provides as follows:

9 Whenever a party has appeared by an attorney, the party may not
10 thereafter appear or act in his or her own behalf in the action, or take any steps
11 therein, unless an order of substitution shall first have been made by the Court,
12 after notice to the attorney of such party, and to all other parties; provided that the
13 Court may in its discretion hear a party in open court, notwithstanding the fact
14 that the party has appeared, or is represented by an attorney.

15 None of the safeguards set forth in subsection (a) of GR 19.1 have been followed here.
16 No substitution has been obtained from Attorney General Douglas B. Moylan or been ordered by
17 the Court, and neither Director of Administration Lourdes M. Perez nor Director of Revenue and
18 Taxation Artemio R. Ilagan have appeared to be heard in open court as to their desires in this
19 matter. The documents filed by Rawlen MT Mantanona, Esq. and the Mantanona Law Office are
20 not an appearance in open court by Directors Perez and Ilagan.

21 Moreover, subsection (b) of GR 19.1 states that:

22 When an attorney of record for any person ceases to act for a party, such
23 party shall appear in person or appoint another attorney either: (1) by a written
24 substitution of attorney signed by the party, the attorney ceasing to act, and the
25 newly appointed attorney; or (2) by a written designation filed in the cause and
 served upon the attorney ceasing to act, unless said attorney is deceased, in which
 event the designation of a new attorney shall so state. Until such substitution is
 approved by the Court, the authority of the attorney of record shall continue for
 all proper purposes.

1 Clearly, no substitution of attorneys has been filed in this case, whereby Attorney
2 General Douglas B. Moylan has withdrawn as attorney of record for Directors Perez and Ilagan,
3 in favor of Rawlen MT Mantanona, Esq. and the Mantanona Law Office.
4

5 Finally, subsection (c) of GR 19.1 provides:

6 An attorney may withdraw from an action or proceeding only by leave of
7 court for good cause shown, and after serving written notice reasonably in
8 advance to the client and to all other parties who have appeared in the case.
9 Leave to withdraw may be granted subject to the condition that subsequent papers
10 may continue to be served on counsel for forwarding purposes or on the clerk of
11 the Court, as the judge may direct, unless and until the client appears by other
12 counsel or in propria persona, and any notice to the client shall so state and any
13 filed consent of the client shall so acknowledge. The authority and duty of
14 counsel of record shall continue until relieved by order of a judge issued
15 hereunder.

16 Since Attorney General Douglas B. Moylan has not sought to withdraw as attorney of
17 record for Directors Perez and Ilagan, he remains their attorney of record under GR 19.1.

18 Lest there be any doubt on this issue, the Guam Rules of Professional Responsibility,
19 Rule 1.16(a)(3), state that an attorney shall continue to represent a party for whom he or she has
20 appeared until "the lawyer is discharged".

21 • **The Entry of Appearance of Rawlen MT Mantanona, Esq. and the
22 Mantanona Law Office violates Guam Procurement Law.**

23 The Guam Procurement Law, in 5 G.C.A. §5121(b), provides that no contract for
24 services of legal counsel in the Executive Branch of the government of Guam shall be executed
25 without the approval of the Attorney General of Guam. The Office of the Attorney General of
Guam has no record of the Attorney General of Guam having approved any contract for legal
services covering the instant case with Rawlen MT Mantanona, Esq. and/or the Mantanona Law
Office. Accordingly, the aforesaid are not authorized under Guam law to represent Directors

1 Perez and Ilagan in this case, and any funds disbursed by the Government of Guam as payment
2 to the Rawlen MT Mantanona, Esq. or the Mantanona Law Office for services rendered in this
3 case are unlawful and may recovered for the treasury of Guam.

4

- 5 • **The Entry of Appearance of Rawlen MT Mantanona, Esq. and the**
6 **Mantanona Law Office violates the Responsibilities conferred on Attorney**
7 **General Douglas B. Moylan by the Organic Act of Guam, the Laws of Guam,**
8 **and Common Law.**

9 The Court is referred to pages 5 – 10 of the MEMORANDUM OF POINTS AND
10 AUTHORITIES IN RESPONSE TO PETITIONER’S MOTION FOR ORDERS APPROVING
11 ADMINISTRATION PLAN, ETC., filed herein by the Respondents on November 8, 2004,
12 setting forth the position of the Attorney General of Guam regarding this point.

13

- 14 • **The Entry of Appearance of Rawlen MT Mantanona, Esq. and the**
15 **Mantanona Law Office violates FRCP 11(a) & (b).**

16 FRCP 11(a) provides that every pleading, written motion, and other paper shall be signed
17 by at least one attorney of record in the attorney’s individual name, and shall state the signer’s
18 address and telephone number, if any. Since Attorney General Douglas B. Moylan is the
19 attorney of record of Directors Perez and Ilagan, the above documents signed and filed by
20 Rawlen MT Mantanona, Esq. and the Mantanona Law Office were wrongful

21 FRCP 11(b) provides that “By presenting to the court (whether by signing, filing,
22 submitting, or later advocating) a pleading, written motion, or other paper, an attorney ... is
23 certifying that to the best of the person’s knowledge, information, and belief, formed after an
24 inquiry reasonable under the circumstances – (1) it is not being presented for any improper
25 purpose” Clearly, Rawlen MT Mantanona, Esq. and the Mantanona Law Office have violated
this prescription.

- The Office of the Attorney General of Guam has cooperated with the Office of the Governor of Guam regarding the EITC.

Although it is contended that the Office of the Attorney General has not cooperated with the Office of the Governor of Guam, or Directors Perez and Ilagan, regarding the EITC, the contention is not true.

Assistant Attorneys General Stephen A. Cohen and Robert W. Weinberg have met with attorneys for the Office of the Governor of Guam on two occasions since September 2004 at the offices of Calvo & Clark, LLP regarding the EITC. The first meeting occurred on September 10, 2004, at which Raymond L. Souza, Jr., Esq. of the Office of the Governor of Guam, and Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark were present. The second meeting occurred on October 19, 2004, at which Shannon Taitano, Esq. of the Office of the Governor of Guam, and Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark were present. The full range of issues concerning the EITC were discussed at these meetings.

Moreover, numerous telephone conversations occurred regarding the EITC, and the Office of the Attorney General transmitted to Rodney J. Jacob, Esq. and Daniel M. Benjamin, Esq. of Calvo & Clark, LLP, a draft of a proposed Answer and a draft of a proposed Motion to Dismiss in the other EITC case filed in this Court, *Charmaine R. Torres v. Government of Guam, Felix P. Camacho, Governor of Guam, et al*, Civil Case No. 04-00038. At their request, the Office of the Attorney General agreed to adopt, and did adopt, the MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GOVERNOR OF GUAM'S MOTION TO DISMISS filed in the *Torres* case. See: Exhibits "J" & "K" attached to the DECLARATION OF RODNEY J. JACOB etc., filed November 24, 2004.

1 At the request of Shannon Taitano, Esq. and Directors Perez and Ilagan, Deputy Attorney
2 General Charles Troutman prepared a Memorandum, dated October 13, 2004, addressing
3 concerns they expressed regarding the applicability of the Illegal Expenditures Act, 5 G.C.A.
4 §22401, to the various aspects of the Settlement Agreement. *See Exhibit "C" of the*
5 DECLARATION OF RODNEY J. JACOB etc., filed on November 24, 2004. Apparently, the
6 Office of the Governor of Guam has chosen to disregard the advice given.
7

8 Significantly, the technical concerns raised by Director Ilagan in his memorandum, dated
9 September 21, 2004, were addressed by Attorney General Douglas B. Moylan in his
10 MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO PETITIONER'S
11 MOTION FOR ORDERS APPROVING ADMINISTRATION PLAN, ETC., filed on November
12 8, 2004.

13 • **Motion to Strike Entry of Appearance and Subsequent Documents.**

14 For the reasons discussed above, the filing of the ENTRY OF APPEARANCE by
15 Rawlen MT Mantanona, Esq. and the Mantanona Law Office and the filing of the subsequent
16 documents herein were wrongful, as Attorney General Douglas B. Moylan is and remains the
17 attorney of record of Directors Perez and Ilagan, to the exclusion of Rawlen MT Mantanona,
18 Esq. and the Mantanona Law Office.
19

20 The Settlement Agreement being disputed was signed by the Acting Governor of Guam,
21 the Acting Director of the Department of Administration, and the Director of the Department of
22 Revenue and Taxation on behalf of the Executive Branch of the Government of Guam, and it is
23 binding on the Executive Branch. It has not been contended that the Acting Governor of Guam,
24 the Acting Director of the Department of Administration, or the Director of the Department of
25

1 Revenue and Taxation lacked the power or the right to sign the Settlement Agreement, or that
2 they acted contrary to the instructions of Felix P. Camacho, Governor of Guam. In a press
3 release on November 26, 2004, the Governor's spokesperson, Sean Gumataotao, stated that Felix
4 P. Camacho, Governor of Guam, supported the Settlement Agreement when it was signed and
5 only later withdrew his support.

6 Under the Organic Act of Guam, the laws of Guam and common law, Attorney General
7 Douglas B. Moylan has the power, the right and the duty to determine litigation policy in this
8 and other cases. A key aspect of litigation policy is that settlements once made, such as the
9 Settlement Agreement here, can not be undone at a later date because certain individuals find
10 them to be inconvenient. The Court should not countenance the attempt made here to undermine
11 the Settlement Agreement by supplanting Attorney General Douglas B. Moylan's power to carry
12 forward under the Settlement Agreement.

14 The Settlement Agreement provides for a fairness hearing to be conducted by the Court,
15 at which the EITC claimants can express any objections to the Settlement Agreement. The
16 Petitioner's motion now before the Court seeks approval of a date for the fairness hearing, as
17 well as dates for the EITC claimants to opt-out of the Settlement Agreement and to file
18 objections to the Settlement Agreement. Thus, the Settlement Agreement has built into it a
19 process for addressing the objections raised in the documents filed by Rawlen MT Mantanona,
20 Esq. and the Mantanona Law Office. Instead, an attempt is being made to short circuit this
21 process through the so-called objections they have filed, which would deny to EITC claimants
22 their right to be heard, although no motion to set aside the Settlement Agreement has been filed
23

1 and no motion under FRCP 60(b) to vacate the Court's Order of June 17, 2004 preliminarily
2 approving the Settlement Agreement has been filed.

3 **CONCLUSION**

4 No motion has been filed in this case seeking the withdrawal of Attorney General
5 Douglas B. Moylan as attorney of record for Directors Perez and Ilagan, and no motions have
6 been filed in this case seeking to set aside the Settlement Agreement or to vacate the Court's
7 Order preliminarily approving the Settlement Agreement. The ENTRY OF APPEARANCE
8 filed by Rawlen MT Mantanona, Esq. and the Mantanona Law Office, and the subsequent
9 documents filed by them in this case, violate the provisions of law discussed above.

10 Accordingly, the motion of the Respondents and Attorney General Douglas B. Moylan to strike
11 the ENTRY OF APPEARANCE of Rawlen MT Mantanona, Esq. and the Mantanona Law
12 Office, and to strike all subsequent documents filed herein by them, should be granted.

13
14 **DATED THIS 6th DAY OF December 2004.**

15
16 **OFFICE OF THE ATTORNEY GENERAL**
Douglas B. Moylan, Attorney General

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18 
19 **ROBERT M. WEINBERG**
Assistant Attorney General
Attorney for Respondents and
Attorney General Douglas B. Moylan

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23 F:\AG\DATA\Solicitor\Cohen\ Santos Motion to Strike Appearance of Rawlen MT Mantanona.
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